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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,285	10/27/2004	Lionel Breton	112701-432	6015

7590

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Robert M Barrett  
Bell Boyd & Lloyd  
P O Box 1135  
Chicago, IL 60690-1135

EXAMINER

BARNHART, LORA ELIZABETH

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/505,285	<b>Applicant(s)</b> BRETON ET AL.	
	<b>Examiner</b> Lora E. Barnhart	<b>Art Unit</b> 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 9 and 30-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 9 and 30-48 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Claims 9 and 30-48 are pending.

### ***Response to Amendments***

Applicant's amendments filed 3/22/06 to claim 9 have been entered. Claims 30-48 have been added. Claims 9 and 30-48 remain pending in the current application.

Upon consideration of these new claims, some of which are nearly identical to original claims 2-7 (which were subject to a species election in the action mailed 9/15/05), the examiner has determined that various elections of species must be made.

### ***Election/Restrictions***

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Lactic acid bacteria: (a) *Lactobacilli* and (b) *Bifidobacteria*, as in claim 30, for example.

*Lactobacillus* species: (c) *Lactobacillus johnsonii*, (d) *Lactobacillus reuteri*, (e) *Lactobacillus rhamnosus*, (d) *Lactobacillus paracasei*, (e) *Lactobacillus casei*, as in claim 31, for example (Elect ONE if species (a) is elected).

*Bifidobacterium* species: (f) *Bifidobacterium bifidum*, (g) *Bifidobacterium breve*, (h) *Bifidobacterium longum*, (i) *Bifidobacterium animalis*, (j) *Bifidobacterium infantis*, (k) *Bifidobacterium adolescentis*, and (l) *Bifidobacterium pseudocatenulatum*, as in claim 31, for example (Elect ONE if species (b) is elected).

Strains: (m) CNCM I-1225, (n) CNCM I-2116, (o) CNCM I-2168, and (p) CNCM I-2170, as in claim 32, for example.

Forms of probiotic bacteria: (q) live form, (r) semi-active form, and (s) deactivated form, as in claim 33, for example.

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Yeasts: (t) *Debaryomyces*, (u) *Kluyveromyces*, (v) *Saccharomyces*, (w) *Yarrowia*, (x) *Zygosaccharomyces*, (y) *Candida*, and (z) *Rhodotorula*, as in claim 34, for example.

Carotenoids: (a') beta-carotene, (b') gamma-carotene, (c') alpha-carotene, (d') lycopene, (e') zeaxanthine, and (g') lutein, as in claim 39, for example.

Food forms: (h') powdered, (i') dried, (j') wet, (k') chilled, and (l') shelf-stable, as in claim 41, for example.

Starch sources: (m') grains, (n') legumes, (o') corn, (p') rice, (q') barley, (r') oats, and (s') soy, as in claim 43, for example.

Protein sources: (t') animal protein, (u') vegetable protein, (v') meat, (w') poultry meal, (x') fish meal, (y') soy protein concentrates, (z') milk proteins, and (a'') gluten, as in claim 44, for example.

Lipid sources: (b'') meats, (c'') animal fats, and (d'') vegetable fats, as in claim 45, for example.

Additional components: (e'') a probiotic and (f'') a long chain fatty acid, as in claim 46, for example.

Long chain fatty acids: (g'') linoleic acid, (h'') alpha-linoleic acid, (i'') gamma-linoleic acid, (j'') eicosapentanoic acid, and (k'') docosahexaenoic acid, as in claim 47, for example (Elect ONE if species (f') is elected).

Further components: (l'') minerals, (m'') vitamins, (n'') sugar, (o'') salt, (p'') spices, (q'') seasonings, and (r'') flavoring agents, as in claim 48, for example.

Applicant is required, in reply to this action, to elect a single embodiment in which all variables are particularly defined to which the claims shall be restricted if no generic claim is finally held to be allowable. That is, applicant should elect ONE lactic acid bacterium, ONE form for the probiotic bacteria, ONE strain of bacteria, ONE yeast, ONE carotenoid, ONE food form, ONE starch source, ONE protein source, ONE lipid source, ONE additional component, and ONE further component from the genres above. If species (a) is elected, applicant should elect ONE *Lactobacillus* species; if species (b) is elected, applicant should elect ONE *Bifidobacterium* species (the election of a single

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strain from those listed in claim 32 will be examined in accordance with the election of probiotic bacteria). If species (f') is elected, applicant should also elect ONE long chain fatty acid. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a) and § 1893.03.

The following claim(s) are generic: Claims 9 and 30-48 are generic to at least one of the groups listed above.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and PCT Administrative Instructions, Annex B, Part 1(f)(I)(B)(2), the species are not art-recognized equivalents.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lora E. Barnhart whose telephone number is 571-272-1928. The examiner can normally be reached on Monday-Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lora E Barnhart



SANDRA E. SAUCIER  
PRIMARY EXAMINER

